

Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B07

PLR-120641-06

Date: November 8, 2006

LEGEND:

Corporation:

State:

Date:

a:

b:

c:

d:

Dear _____ :

We received a letter dated Date from your authorized representative requesting rulings regarding the application of § 216 of the Internal Revenue Code to Corporation. This letter responds to that request.

The represented facts are as follows. Corporation is a cooperative housing corporation organized under the laws of State. Corporation is in the process of constructing a mixed-income housing project that will include a residential units in b apartment buildings. The a units will be divided into c low income units, c moderate income units, and c market rate units, with share allocations corresponding to each income category. Corporation has received below-market private financing and subsidized governmental financing that require the inclusion of low income and moderate income units (collectively referred to as the "Affordable Units"), and also entail income eligibility requirements, limitations on purchase prices and restrictions on resale with respect to the Affordable Units.

Corporation is authorized to issue d shares of common stock entirely to the residential units. Corporation represents that it is authorized to issue only one class of stock. Corporation further represents that the shares of the Corporation to be issued

with respect to each unit will be fully paid up in an amount bearing a reasonable relationship to the portion of the fair market value of the Leasehold Property attributable to that unit bears to the fair market value of the Leasehold Property as a whole.

The proprietary lease will entitle tenant-stockholder as the purchaser of the shares attributable to a residential unit to occupy the unit. The owner of the unit will at all times have the right, as against the Corporation, to occupy the unit for dwelling purposes. Furthermore, under the terms of the lease, the Corporation is required to pay all real estate taxes imposed upon the Leasehold Property by any governmental authority.

You have specifically requested the following ruling:

Whether the imposition by governmental agencies of income eligibility requirements, limitations on purchase prices and restrictions on resale with respect to certain tenant-stockholders in the Corporation shall not cause any person to fail to qualify as a "tenant-stockholder" as defined in § 216(b)(2), or shall prevent the Corporation, in which such tenant-stockholder holds stock, to qualify as a "cooperative housing corporation" as defined in § 216(b)(1)?

Section 216(a) provides that in the case of a tenant-stockholder (as defined in subsection (b)(2)), there shall be allowed as a deduction amounts (not otherwise deductible) paid or accrued to a cooperative housing corporation within the TY, but only to the extent that such amounts represent the tenant-stockholder's proportionate share of—

(1) the real estate taxes allowable as a deduction to the corporation under § 164 which are paid or incurred by the corporation on the houses or apartment building and on the land on which such houses (or building) are situated, or

(2) the interest allowable as a deduction to the corporation under § 163 which is paid or incurred by the corporation on its indebtedness contracted—

(A) in the acquisition, construction, alteration, rehabilitation, or maintenance of the houses or apartment building, or

(B) in the acquisition of the land on which the houses (or apartment building) are situated.

Section 216(b)(1) provides that the term "cooperative housing corporation" means a corporation –

(A) having one and only one class of stock outstanding,

(B) each of the stockholders of which is entitled, solely by reason of his ownership of stock in the corporation, to occupy for dwelling purposes a house, or an apartment in a building, owned or leased by such corporation,

(C) no stockholder of which is entitled (either conditionally or unconditionally) to receive any distribution not out of earnings and profits of the corporation except on a complete or partial liquidation of the corporation, and

(D) 80 percent or more of the gross income of which for the taxable year in which the taxes and interest described in § 216(a) are paid or incurred is derived from tenant-stockholders.

Section 216(b)(2) provides that the term "tenant-stockholder" means a person who is a stockholder in a cooperative housing corporation, and whose stock is fully paid-up in an amount not less than an amount shown to the satisfaction of the Secretary as bearing a reasonable relationship to the portion of the value of the corporation's equity in the houses or apartment building and the land on which situated which is attributable to the house or apartment which such person is entitled to occupy.

Section 1.216-1(e)(2) provides, in relevant part, that in order to qualify as a "cooperative housing corporation" under § 216, each stockholder of the corporation, whether or not the stockholder qualifies as a tenant-stockholder under §§ 216(b)(2) and 1.216-1(f), must be entitled to occupy for dwelling purposes an apartment in a building or a unit in a housing development owned or leased by such corporation. The stockholder is not required to occupy the premises. The right as against the corporation to occupy the premises is sufficient. Such right must be conferred on each stockholder solely by reasons of his or her ownership of stock in the corporation. That is, the stock must entitle the owner thereof either to occupy the premises or to a lease of the premises. The fact that the right to continue to occupy the premises is dependent upon the payment of charges to the corporation in the nature of rentals or assessments is immaterial.

Applying the above standards to the facts and representations submitted and subject to the limitation below, we conclude that provided Corporation satisfies the requirements of § 216(b)(1)(A), (C), and (D), the imposition by governmental agencies of income eligibility requirements, limitations on purchase prices and restrictions on resale with respect to certain tenant-stockholders in the Corporation shall not cause any person to fail to qualify as a "tenant-stockholder" as defined in § 216(b)(2), or shall prevent the Corporation, in which such tenant-stockholder holds stock, to qualify as a "cooperative housing corporation" as defined in § 216(b)(1).

We conclude that the purchaser of the stock of Corporation attributable to the residential units will qualify as a "tenant-stockholder" for purposes of § 216(b)(2), provided such stock is fully paid up in an amount which bears a reasonable relationship to the portion of the value of Corporation's equity in the building and land which is attributable to the unit which the purchaser is entitled to occupy.

We further conclude, based upon Corporation's representation that it is authorized to issue only one class of stock, that provided all outstanding shares in Corporation confer identical rights to distribution and liquidation proceeds to Corporation's tenant-stockholders, Corporation will satisfy the requirements of § 216(b)(1)(A).

Except as expressly provided herein, we express or imply no opinion concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Further, we express or imply no opinion whether Corporation otherwise meets the requirements of § 216.

Specifically, we express or imply no opinion as to whether Corporation meets the requirements of § 216(b)(2) concerning whether the stock bears a reasonable relationship to the portion of the value of the Corporation's equity in the building and land which is attributable to the unit which the purchaser is entitled to occupy.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

In accordance with the Power of Attorney on file with this office, we are sending a copy of this letter to your authorized representative. A copy of this ruling must be attached to any income tax return to which it is relevant.

Sincerely,

/s/

Joseph H. Makurath
Senior Technician Reviewer, Branch 7
Office of Associate Chief Counsel
(Passthroughs & Special Industries)